

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:08-CR-99-FL-1

No. 5:11-CV-166-FL

CHRISTOPHER RAY PARRISH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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ORDER

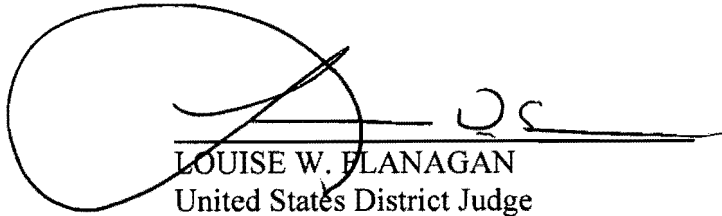
This matter is before the court on the Memorandum and Recommendation (“M&R”) of United States Magistrate Judge William A. Webb, regarding the government’s motion to dismiss petitioner’s motion under 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence by a person in federal custody (“motion to vacate”). No objections to the M&R have been filed, and the time within which to make any objection has expired. This matter is ripe for ruling.

Upon review of the M&R, the court finds that while it is recommended that the undersigned set this matter for resentencing, the magistrate judge did not address petitioner’s other claims in his § 2255 petition, including petitioner’s claims of ineffective assistance of counsel - failed to raise speedy trial action violation; ineffective assistance of counsel - failed to properly advise regarding plea; ineffective assistance of counsel - failure to advise regarding guidelines; ineffective assistance of counsel - misadvice regarding career offender; ineffective assistance of counsel - failure to move for withdrawal of guilty plea; counsel provided constitutionally ineffective assistance by failing to object to the court’s decision to impose a guideline sentence as a means of influencing state

sentencing practices; and ineffective assistance of counsel - failing to object to the court's non-compliance with Rule 11 procedures.

As such, this matter is RECOMMENDED to the magistrate judge for memorandum and recommendation on petitioner's motion pursuant to 28 U.S.C. § 2255 (DE # 52) and the government's motion to dismiss (DE # 58). Where the parties agree that resentencing is appropriate under United States v. Simmons, 649 F.3d 237 (4th Cir. 2011), the court ADOPTS the recommendation of the magistrate judge in PART on that limited basis. This matter will be set for resentencing after the other claims in petitioner's § 2255 petition are decided by the court.

SO ORDERED, this the 21st day of February, 2012.



LOUISE W. FLANAGAN
United States District Judge